IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3938 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SRINIVASAN RAJU MUDALIYAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3938 of 2002

MR RS SANJANWALA for Petitioner No. 1-2

MR ND GOHIL APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 20/07/2002

ORAL JUDGEMENT

1. By means of filing this petition under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code'), petitioners have prayed to quash and set aside the FIR being CR No.1237/2002

registered at Gandevi Prohibition Station, District Navsari. The petitioners have further prayed to quash all the proceedings initiated pursuant to the said FIR and also prayed to release the gur and the truck bearing registration No. TN-28-A-1040 belonging to petitioner No.1 forthwith and unconditionally, on the grounds stated in the petition.

2. It is stated in the petition that FIR being CR No.1237 of 2002 came to be lodged against petitioner No.1 with Gandevi Prohibition station. As per the said FIR, a truck bearing registration No. TN-28-A-1040 which was coming from Tamil Nadu and going towards Rajasthan was stopped and searched on 20.6.2002 by the police authorities. On search they found 200 bags of rotten gur, being 10,000 Kgs. The driver, that is, petitioner No.1 was called upon to produce the pass or permit authorizing the possession of the rotten gur but he failed to produce the same. It is also alleged against the petitioners that the sample of gur was collected, which was sent for chemical analysis. Therefore, it is alleged against petitioner No.1 that he has been found with the rotten gur as defined under Section 2 (39) A of the Bombay Prohibition Act, 1949 (hereinafter referred to as 'the Act'), which is punishable under section 70A of the Act.

3. It is the say of the petitioners that the gur in question was despatched by petitioner No.2 M/s. Padmini Traders, having its place of business at Anaj Mandi Pragan, Ashta, District Sehore, M.P. in favour of Mohanlal Ashok Kumar Gur Merchants, having their place of business at Purani Pura Mundy, Gangapur City, Rajasthan. The gur in question was entrusted to truck No.TN-18-A-1040 for transportation from Tamil Nadu to Rajasthan. A copy of the invoice issued by petitioner No.2 in favour of Mohanlal Ashok Kumar Gur Merchants is annexed as Annexure B to the petition. In the said invoice it has been mentioned that the recipient of muddamal jaggery has been described as Mohanlal Ashok Kumar Gur Merchants, having their place of business at Rajasthan. It is the case of the petitioners that the above documents were in the truck and were shown by petitioner No.1 to the police authorities. Petitioner No.1 has also explained that the muddamal gur is being transported through the State of Gujarat and it is destined for Rajasthan. The petitioners further state that the petitioner No.2 is holding valid licenses issued under the relevant laws applicable in M.P. entitling them to business in all kinds of jaggery. It is further case of the petitioners that the above facts were pointed

out to the police authorities but ignoring the above facts, the FIR came to be lodged for the reasons best known to the police authorities against petitioner No.1. So, according to the say of the petitioners, they have not committed any offence within the territory of Gujarat State as the said gur was to be despatched outside Gujarat State at Rajasthan. The truck was only passing through the territory of Gujarat State. Therefore, the petitioners have prayed for the reliefs to which reference is made in the earlier paragraphs of this judgment.

4. I have heard Mr.Sanjanwala, learned advocate for the petitioners, Mr ND Gohil, learned APP for the respondents and perused the averments made in the memo of the petition, grounds set out therein and the documents annexed therewith. I have also gone through the relevant provisions of Gujarat Through Transport Rules, 1966, Amended Bombay Prohibition Act, 1978 and various unreported judgments delivered in similar cases by this Court, copies whereof have been supplied by Mr. Sanjanwala, learned advocate for the petitioners during the course of his submissions.

5. Having considered the submissions advanced by the learned advocates appearing for the parties, it can be said that in similar cases which are enlisted below, this court has quashed criminal complaints and further proceedings:

(1) Special Criminal Application Nos.4 and 5 of 1986 (decided on 28.1.1986).
(2) Criminal Misc. Application Nos.774 and 775 of 1985 (decided on 1.7.1985).
(3) Misc. Criminal Application No. 4763/1998 (decided on 27.11.1998).
(4) Misc. Criminal Application Nos. 2785/94, 2786/91, 2787/91 and 2788/91 (decided on 25.8.1993).
(5) Misc. Criminal Application Nos.3041/95 and 3044/95.
(6) Cri. Misc. Application No. 482/95 (decided on 10.2.1995)
(7) Misc. Cri. Application No.750/96 (decided on 13.9.1995).
(8) Misc. Cri. Application No.4392/99 (decided on 25.8.1999).
(9) Cri. Misc. Application No.4493/99 (decided on 25.8.1999).
(10) Cri. Misc. Application No. 7606/99 (decided on 17.12.1999).
(11) Cri. Misc. Application No. 7673/99 (decided on

21.12.1999).

6. There is no manner of doubt that the truck in question which was intercepted at Bilimora by respondent No.2 was loaded with 200 bags of rotten gur which was to be unloaded at Rajasthan. Moreover, as per various documents, which are invoices produced alongwith the petition, the fact remains that the goods were to be unloaded at Rajasthan. Therefore, it is obvious that the said truck was passing through the territory of Gujarat State. So far as the offence under Section 70A of the Act is concerned, if the rotten gur were to be manufactured or sold in Gujarat State then and then only the offence can be said to have been committed within the territory of Gujarat State. Therefore, I am of the opinion that the prayer made in this petition deserves to be granted and thereby the offence registered vide CR No. 1237 of 2000 registered with respondent No.2 police station is required to be quashed and set aside by allowing this petition.

7. For the forgoing reasons, the petition succeed and accordingly it is allowed. The FIR being CR No.1237/2002 registered with Gandevi Prohibition Station is hereby quashed and further proceedings pursuant to the said FIR is also quashed. Rule is made absolute. Direct service is permitted.

8. While directing quashing of the FIR being CR.1237/2002 and the proceedings pursuant to the said FIR, so far as the muddamal is concerned, following order is passed;

(1) The muddamal gur seized from the truck bearing registration No.TN-28-A-1040 in pursuance of the FIR being CR 1237/2002 be released to petitioner No.2 on its giving undertaking to the satisfaction of the Magistrate concerned that the accused shall not store or use or consume the said gur within the territory of Gujarat State and the same shall be taken to its destination out of the limit of Gujarat State.

(2) The petitioners shall carry the goods in question under the police escort to be given by the police authority at the cost of petitioner No.2.

(3) The truck bearing registration No. TN-28-A-1040 shall be released in favour of petitioner No.1 after proper verification.

(A.M. Kapadia, J.)

(karan)